

Re: A request for an interpretation of BPC sections 6731(e) and 6734 in re engineering reports prepared as part of the BID formation process

From: [REDACTED]
To: Moore, Ric@DCA <Ric.Moore@dca.ca.gov>
Cc: emathieson@exponent.com, Criswell, Tiffany@DCA <Tiffany.Criswell@dca.ca.gov>
Subject: Re: A request for an interpretation of BPC sections 6731(e) and 6734 in re engineering reports prepared as part of the BID formation process
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But Jackie Lowe's response says explicitly that the Board a priori doesn't consider the preparation of engineering reports to constitute the practice of engineering. What is that if not a statement of policy? If it weren't a policy, but had to do with the specific enforcement situation, why didn't she say "the preparation of ***this*** engineering report doesn't constitute the practice of engineering"? It's clear from her response that she didn't read the report, didn't react to facts from the report, but relied purely on principle to reject the report.

In fact, Ms. Criswell told me that it has happened before: "I was made aware, through recollection by Board Staff, that there have been complaint investigations related to the subject matter that resulted in opinions by licensed experts that the tax assessment reports in them did not constitute the practice of professional engineering as defined by Business and Professions Code section 6731." I'm not sure where you're getting the "rarely, if ever" part, therefore.

So it seems that your agency has an unwritten policy, in the sense of a rule that's applied prior to factual analysis, that a certain kind of activity does not constitute engineering practice, even though the governing statute explicitly says that the preparation of engineering reports is part of the practice of engineering.

It seems as if there's a genuine ambiguity in the law here. Wouldn't it be better for everyone to ask the AG what the law means?

Alternatively, if I do submit a complaint, can I have your assurance that someone will at least read it and respond to the factual allegations, rather than dismissing it a priori based on a theory? I promise that it will include a section arguing that the activities described do in fact constitute the practice of engineering as described in the law.

Thanks for discussing this further.

[REDACTED]

p.s. And thanks for the invite to the meetings. It's possible I'll be able to make the one in San Diego. Do you all ever have teleconference locations in Los Angeles? Would you all consider setting one up for one meeting this year?

On Mon, Apr 16, 2018, at 10:13 AM, Moore, Ric@DCA wrote:

I don't believe that I've heard or read in this correspondence that our Board has established any policy to this effect. If I've missed that, please point it out to me, since we are prohibited from actually establishing such a policy in that general of a nature without proceeding through the legislative or regulatory rulemaking process. I've read in this correspondence that a specific enforcement situation led to a decision, but that would be specific to that certain case of facts and not a policy established by the Board. I also read in this correspondence that it is suspected that we rarely, if ever, dealt with this topic in the past, but until the research can be conducted as previously explained by Ms. Criswell, we simply only know what has already been conveyed to you at this point.

Ric Moore